

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA  
Lincoln Division

In Re

**Kristine L. Kavanaugh,**

Debtor.

**The Bank of New York Mellon, fka The Bank of New York as Successor in interest to JP Morgan Chase Bank NA as Trustee for Structured Asset Mortgage Investments II Inc. Bear Stearns ALT-A Trust 2005-5, Mortgage Pass-Through Certificates, Series 2005-5,**

its principals, successors and assigns

Movant,

v.

**Kristine L. Kavanaugh,** Debtor,

and

**Rick D. Lange,** Trustee,

Respondents.

Case No. **10-40835**

Chapter 7

**MOTION FOR RELIEF FROM  
THE AUTOMATIC STAY**

MOVANT WAIVES 30 DAY  
HEARING

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**MOTION FOR RELIEF FROM AUTOMATIC STAY**

COMES NOW The Bank of New York Mellon, fka The Bank of New York as Successor in interest to JP Morgan Chase Bank NA as Trustee for Structured Asset Mortgage Investments II Inc. Bear Stearns ALT-A Trust 2005-5, Mortgage Pass-Through Certificates, Series 2005-5, and its principals Successors and Assigns, "Movant" herein, pursuant to Bankruptcy Rules 4001 and 9014, states and alleges as follows:

1. Kristine L. Kavanaugh ("Debtor") filed her Chapter 7 Bankruptcy petition on March 23, 2010 and it is currently pending before this Court.
2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. Sections 151,

157 and 1334 and NEGenR 1.5(a). This is a core proceeding pursuant to 28 U.S.C. Section 157(b)(2). Venue is proper in this District under 28 U.S.C. Section 1409(a).

3. On February 24, 2005, a negotiable promissory note ("Note") was executed in favor of Pulte Mortgage, LLC d/b/a Del Webb Home Finance, in the principal amount of \$189,081.00 plus interest to accrue thereon at the rate of 5.250% per annum. A copy of said Note is marked Exhibit 1 and is attached hereto and incorporated herein by reference.

4. The Note is secured by a Deed of Trust ("Deed") on certain real property and improvements located at 7912 Broadwing Drive, North Las Vegas, NV 89084. A copy of said Deed of Trust is marked Exhibit 2 and is attached hereto and incorporated herein by reference. The Deed was recorded on February 28, 2005, as Document 20050228-0000799. The subject real estate is legally described as follows:

**ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF CLARK, STATE OF NEVADA, DESCRIBED AS FOLLOWS: PARCEL I: LOT ONE HUNDRED THIRTY-TWO (132) IN BLOCK FIVE (5) OF SUN CITY ALIANTE UNIT 6 PHASE 2 AS SHOWN BY MAP THEREOF ON FILE IN BOOK 110 OF PLATS, PAGE 30 AND AS AMENDED BY THAT CERTAIN "CERTIFICATE OF AMENDMENT " RECORDED NOVEMBER 12, 2003 IN BOOK 20031112, AS DOCUMENT NO. 01874 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF CLARK, NEVADA.**

**PARCEL II: AN EASEMENT FOR INGRESS AND EGRESS OVER THAT CERTAIN COMMON AREA AS SET FORTH IN THAT CERTAIN MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR ALLIANTE RECORDED NOVEMBER 27, 2002, AS DOCUMENT NO. 01887 OF OFFICIAL RECORDS, AS NOW OR HEREAFTER AMENDED.**

(hereafter, the "Property").

5. Movant is the owner and holder of said Note and Deed of Trust.

6. Debtor has defaulted on the Note in that 4 contractual payments for the months of January 2010 through and including April 2010 have been missed. The total contractual arrearage due as of April 1, 2010 is \$6,202.41 and itemized below:

Quantity	Item	Rate	Amount
3	Payment Amount @	\$1,083.31	\$3,249.93
1	Late Charges @	\$124.08	\$124.08
1	Property Inspection Fees @	\$30.00	\$30.00
1	Payment Amount @	\$669.72	\$669.72
1	Foreclosure Fees @	\$360.00	\$360.00
1	Foreclosure Costs @	\$968.68	\$968.68
1	Attorneys Fees @	\$650.00	\$650.00
1	Attorneys Costs @	\$150.00	\$150.00
	Grand Total @		\$6,202.41

Additionally, Debtor has filed her statement of intentions in which she expresses her intent to surrender the Property, and Movant requests this Court take judicial notice of the same.

7. The balance owed on the Note is approximately \$194,261.78. The fair market value of the property, according to the Clark County assessor's office, is approximately \$115,454.00. Movant asserts that Debtor enjoys no equity in the Property and such Property is not necessary for an effective reorganization.

8. In addition to Movant, the following entities may claim an interest in the Property:

-None

9. Pursuant to 11 U.S.C. § 362(d)(1) and (2), on request of a party in interest and after notice and hearing, the Court shall grant relief from the automatic stay, for cause, including non-payment or lack of adequate protection of an interest in property of a party in interest and/or if (a) the Debtor does not have equity in such property, and (b) such property is not necessary for an effective reorganization.

10. Movant asserts that Debtor's failure to make regular payments as required under the Note and Deed of Trust and lack of equity in the property, and Debtor's intent to surrender the Property result(s) in a lack of adequate protection of Movant's security interest and, therefore, a continuation of the automatic stay imposed under Section 362 places Movant's collateral in jeopardy. As such, grounds exist for granting relief from automatic stay, effective immediately upon entry of the order.

11. The Movant further seeks relief in order to, at its option, offer, provide and enter into any potential forbearance agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement. The Movant may contact the Debtor via telephone or written correspondence to offer such an agreement. Any such agreement shall be non-recourse unless included in a reaffirmation agreement.

WHEREFORE, The Bank of New York Mellon, fka The Bank of New York as Successor in interest to JP Morgan Chase Bank NA as Trustee for Structured Asset Mortgage Investments II Inc. Bear Stearns ALT-A Trust 2005-5, Mortgage Pass-Through Certificates, Series 2005-5 respectfully prays this Court:

Enter an Order granting relief from the automatic stay and finding that the fourteen (14) day stay period pursuant to Rule 4001(a)(3) shall be inapplicable; authorizing Movant to exercise its rights under the Note and Deed of Trust and applicable non-bankruptcy laws; authorizing Movant to pursue its state court remedies for possession of the subject real estate; authorizing Movant to, at its option, offer, provide and enter into any potential forbearance agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement; authorizing Movant to contact the Debtor via telephone or written correspondence to offer such an agreement, which shall be non-recourse unless included in a reaffirmation agreement; finding that the real property is abandoned by the Chapter 7 Trustee as an asset of the bankruptcy estate, effective upon entry of the Order; and for such other

orders as the Court deems appropriate.

Respectfully submitted,

\_\_\_\_/s/ William T. Holmes, II\_\_\_\_  
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Clinton Woerth, #53825  
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I certify that a true copy of the Above Pleading was served either electronically or via first class mail on April 1, 2010, upon the following parties:

Kristine L. Kavanaugh  
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Beatrice, NE 68310

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Attorney for Debtor  
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Rick D. Lange  
Trustee  
1201 Lincoln Mall, Ste. 102  
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Office of the US Trustee  
U.S. Trustee  
111 So 18th Plz, Suite 1148  
Omaha, NE 68102

/s/ Shannon Todd  
Shannon Todd